

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	§	CHAPTER 7
	§	
AMERICAN UNDERWRITING	§	Case No. 18-58406-SMS
SERVICES, LLC,	§	
	§	
<u>Debtor.</u>	§	

**NOTICE OF HEARING ON FIRST OMNIBUS OBJECTION TO CERTAIN CLAIMS  
ASSERTED IN THE BANKRUPTCY CASE AS SECURED CLAIMS**

PLEASE TAKE NOTICE that S. Gregory Hays, Chapter 7 Trustee (the “Trustee”) for the bankruptcy estate of American Underwriting Services, LLC, Debtor in the above captioned case, filed a *First Omnibus Objection to Certain Claims Asserted in the Bankruptcy Case as Secured Claims* (the “Objection”)<sup>1</sup> seeking an order disallowing and reclassifying the claims listed on Exhibit “A” to the Objection.

***THIS IS AN OMNIBUS OBJECTION TO CLAIMS. CLAIMANTS RECEIVING THIS NOTICE AND OBJECTION SHOULD LOCATE THEIR NAME AND CLAIM IN EXHIBIT A TO THE OBJECTION.***

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this Bankruptcy Case. If you do not have an attorney, you may wish to consult one.**

If you do not want the Court to grant the relief requested, or if you want the Court to consider your views, then on or before **April 14, 2021**, you or your attorney must:

1. File with the Court a written response, explaining your positions and views as to why your claims should be allowed as scheduled. The written response must be filed at the following address:

Clerk, United States Bankruptcy Court for the Northern District of Georgia  
Room 1340  
Richard B. Russell Federal Building and United States Courthouse  
75 Ted Turner Drive, SW  
Atlanta, GA 30303

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<sup>1</sup> The Objection is on file with the Clerk of the Court at the address set forth below and is available for review between 8:00 a.m. and 4:00 p.m. or online anytime at <http://ecf.ganb.uscourts.gov> (registered users) or at <http://pacer.psc.uscourts.gov> (unregistered users) or a copy may be obtained from counsel for the Trustee identified below.

If you mail your response to the Clerk for filing, you must mail it early enough so that the Clerk will **actually receive** it on or before the date stated above.

2. Mail or deliver a copy of your written response to the Trustee's attorney at the address stated below. You must attach a Certificate of Service to your written response stating when, how, and on whom (including addresses) you served the response.

If you or your attorneys do not file a timely response, the Court may decide that you do not oppose the relief sought, in which event the hearing scheduled below may be canceled and the Court may enter an order disallowing your claim as requested without further notice and without a hearing.

If you or your attorneys file a timely response, then a hearing will be held at **10:30 a.m.** on **April 21, 2021** in **Courtroom 1201**, Richard B. Russell Federal Building, 75 Ted Turner Drive, S.W. Atlanta, Georgia 30303. You or your attorney must attend the hearing and advocate your position. Please check the "Important Information Regarding Court Operations During COVID-19 Outbreak" tab at the top of the GANB Website prior to the hearing for instructions on whether to appear in person or by phone. If an objection or response is timely filed and served, the hearing will proceed as scheduled.

**NOTICE IS HEREBY GIVEN THIS 5th day of March, 2021.**

Respectfully submitted,

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.

Henry F. Sewell, Jr.

Georgia Bar No. 636265

Buckhead Centre

2964 Peachtree Road NW, Suite 555

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(404) 926-0053

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COUNSEL FOR THE CHAPTER 7 TRUSTEE

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE:	§	CHAPTER 7
	§	
AMERICAN UNDERWRITING SERVICES, LLC,	§	Case No. 18-58406-SMS
	§	
<u>Debtor.</u>	§	

**FIRST OMNIBUS OBJECTION TO CERTAIN CLAIMS ASSERTED IN  
THE BANKRUPTCY CASE AS SECURED CLAIMS**

**THIS IS AN OMNIBUS OBJECTION TO CLAIMS. CLAIMANTS RECEIVING THIS  
OBJECTION SHOULD LOCATE THEIR NAME AND CLAIM IN EXHIBIT A TO THIS  
OBJECTION.**

COMES NOW, S. Gregory Hays, Chapter 7 Trustee (the “**Trustee**”) for the bankruptcy estate (the “**Estate**”) of American Underwriting Services, LLC, Debtor (the “**Debtor**”) in the above captioned case (the “**Bankruptcy Case**”), by and through counsel, and hereby files this *First Omnibus Objection to Certain Claims Asserted in the Bankruptcy Case as Secured Claims* (the “**Objection**”). In support of this Objection, the Trustee shows the Court as follows:

**RELIEF REQUESTED**

1. **Exhibit “A”** attached to this Objection and incorporated herein by reference contains: a) the name and address of each of the claimants (collectively, the “**Claimants**”) who filed secured claims (collectively, the “**Claims**”) that the Trustee is seeking to disallow and reclassify pursuant to this Objection; b) the claim number applicable to each of the Claims; c) the amount claimed to be owed by the Debtor pursuant to each of the Claims filed by the respective Claimants; d) the proposed classification of each of the Claims as an unsecured claim; and e) the proposed allowed amount, if any, of each of the Claims to which the Trustee objects.

2. The Trustee maintains that the Claims should be disallowed and reclassified by the Court as set forth in the attached **Exhibit “A”**, and, to that extent, the Trustee hereby objects to any Claims that are improperly asserted in the Bankruptcy Case or that assert a priority in an amount or classification in excess of an allowable claim against the Debtor.

3. Pursuant to 11 U.S.C. §§ 105, 502, and 507 of the Bankruptcy Code (the “**Bankruptcy Code**”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Trustee respectfully requests that this Court: a) disallow the Claims as secured claims and reclassify the Claims as unsecured claims; b) find that the Claimants holding the Claims are only entitled to receive a distribution on the Claims as unsecured claims; and c) grant the Trustee such other and further relief as the Court may deem just and equitable with regard to the Claims.

### **JURISDICTION**

4. This Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b).

### **PROCEDURAL BACKGROUND**

5. On May 18, 2018 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Georgia (the “**Court**”). On June 27, 2018, the United States Trustee filed a notice of appointment of Chapter 11 Trustee pursuant to which S. Gregory Hays was appointed as the Chapter 11 Trustee for the bankruptcy estate of the Debtor.

6. On August 1, 2018, the Court converted the Case to a proceeding under Chapter 7 effective July 27, 2018 [Doc. No. 106] and directed the United States Trustee to appoint a trustee in the Chapter 7 Case.

7. On August 13, 2018, the United States Trustee filed a Notice of Appointment of Interim Trustee and Section 341(a) Meeting of Creditors [Doc. No. 108] in which S. Gregory Hays was appointed as interim trustee in the Chapter 7 Case. The Trustee remains the duly acting Chapter 7 trustee for the bankruptcy estate of the Debtor.

### **CLAIMS SUBJECT TO OBJECTION**

8. The Trustee is in the process of reviewing claims filed in the Bankruptcy Case. As part of this review, the Trustee determined that: a) the Trustee did not and will not administer any assets subject to the purported lien of the Claimants and, as such, no distribution will be made to the Claimants as a secured creditor; and b) the Claims should be disallowed as secured claims and reclassified as unsecured claims.

9. Prior to the Petition Date, the Debtor provided liability insurance products—as a program underwriter based in Atlanta, Georgia—for the trucking and transportation industry, including with regard to commercial auto liability, motor truck cargo, auto physical damage, property, and general liability products.

10. As part of the operations of the Debtor, the Debtor was responsible for collecting and remitting certain premiums to applicable insurance companies. While the Debtor did collect certain premiums, the Debtor did not maintain premium funds collected prior to the Petition Date in segregated fiduciary accounts. Instead, the premium funds collected prior to the Petition Date were comingled with other funds and used by James Russell Wiley and Neil Wiley for corporate and personal uses without regard to the source of the funds. After the Petition Date, the Debtor

held all premiums, return premiums, or other funds belonging to insurers that were received by the Debtor in trust and turned over such proceeds as appropriate.

11. The Claimants were among the parties who conducted business with the Debtor prior to the Petition Date and assert the Claims to recover premiums that were not segregated in fiduciary accounts prior to the Petition Date. The Trustee objects to the Claims because the Trustee is not holding any specific cash or other assets subject to the purported liens of the Claimants. There is no basis to treat the Claims as secured in the Bankruptcy Case and, as such, the Trustee seeks the disallowance of the claims as secured and reclassification of the Claims to unsecured claims.

#### **BASIS FOR RELIEF**

12. After a review of all proofs of claim filed in the Bankruptcy Case, the register of claims maintained by the Court, and the books and records of the Debtor, the Trustee has determined that the Claims should be disallowed as secured and reclassified as unsecured claims. The Trustee reserves the right to supplement this Objection and to object to the Claims on other grounds not stated herein. In addition, the Trustee reserves the right to object to any other claims filed or scheduled in the Bankruptcy Case.

13. Pursuant to Rule 3007(d)(7) of the Bankruptcy Rules, the Trustee asserts that the Claims assert security interests in cash rather than claims against the Debtor. Since the Trustee is not holding any specific cash or other assets subject to the purported liens of the Claimants, the Claims should be disallowed as secured with any remaining claim allowed and reclassified as an unsecured claim as shown on **Exhibit "A"** attached hereto.

14. Pursuant to Rule 3007(d)(8) of the of the Bankruptcy Rules, the Trustee further asserts that the Claims assert a priority in an amount that exceeds the maximum amount under

Section 507 of the Bankruptcy Code and, as such, the Claims should be disallowed as secured with any remaining claim allowed and reclassified as an unsecured claim as shown on **Exhibit “A”** attached hereto. Since there is no basis for treating the Claims as secured claims under Sections 503 or 507(a) of the Bankruptcy Code, the Claims are actually only general unsecured obligations of the Estate and should be reclassified accordingly.

**WHEREFORE**, the Trustee respectfully requests that the Court:

1. Sustain and grant the relief sought in this Objection;
2. Find that the Claimants holding the Claims are only entitled to receive a distribution on the Claims as unsecured claims;
3. Grant the relief requested in this Objection with regard to the Claims as set forth in **Exhibit “A”** and disallow the Claims as secured and reclassify the Claims as unsecured claims;
4. Enter an Order, in substantially the same form as **Exhibit “B”** attached hereto, granting the Objection and disallowing the Claims as secured and reclassifying the Claims in the Bankruptcy Case as unsecured as shown on **Exhibit “A”** attached hereto; and
5. Grant the Trustee such other and further relief as the Court may deem just and proper.

Respectfully submitted, this 5th day of March, 2021.

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.  
Henry F. Sewell, Jr.  
Georgia Bar No. 636265  
Buckhead Centre  
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Atlanta, GA 30305  
(404) 926-0053; hsewell@sewellfirm.com  
COUNSEL FOR THE CHAPTER 7 TRUSTEE

**Exhibit A**  
**(Schedule of Claims Subject to Objection)**

<b>Claimant Name</b>	<b>Address</b>	<b>Claim No.</b>	<b>Filed Amount</b>	<b>Proposed Class</b>	<b>Allowed Amount</b>
AFCO Credit Corporation	5600 North River Road, Rosemont, IL 60018	51	\$74,337.45	Unsecured	\$74,337.45
American Inter-Fidelity Exchange	Thompson Hine, c/o Garrett A. Nail, 3560 Lenox Road, Two Alliance Ctr., Ste. 1600, Atlanta, GA 303026	24	\$645,472.92	Unsecured	\$645,472.92
Prosight Specialty Management Company Inc. and New York Marine and General Insurance Company	Gary Marsh, Esq., Dentons US LLP, 303 Peachtree St., NE, Suite 5300, Atlanta, GA 30308	15	\$5,223,997.53	Unsecured	\$5,223,997.53
Seneca Crum Forster Insurance Company	Soffer, Rech & Borg, LLP, 48 Wall Street, 26th Floor, New York, NY 10005	8	\$204,654.54	Unsecured	\$204,654.54



**Exhibit B  
(Proposed Order)**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE:	§	CHAPTER 7
	§	
AMERICAN UNDERWRITING	§	Case No. 18-58406-SMS
SERVICES, LLC,	§	
	§	
<u>Debtor.</u>	§	

**ORDER SUSTAINING FIRST OMNIBUS OBJECTION TO CERTAIN CLAIMS  
ASSERTED IN THE BANKRUPTCY CASE AS SECURED CLAIMS**

On March 5, 2021, S. Gregory Hays, Chapter 7 Trustee (the “**Trustee**”) for the bankruptcy estate (the “**Estate**”) of American Underwriting Services, LLC, Debtor (the “**Debtor**”) in the above captioned case (the “**Bankruptcy Case**”), filed a *First Omnibus Objection to Certain Claims Asserted in the Bankruptcy Case as Secured Claims* [Doc. No. \_\_\_\_] (the “**Objection**”).<sup>1</sup> The Objection seeks the entry of an Order disallowing as secured and reclassifying the claims listed in Exhibit “A” to the Objection (collectively, the “**Claims**”) as unsecured.

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Objection.

On March 5, 2021, counsel for the Trustee also filed a notice setting the Objection and any responses thereto for hearing on April 21, 2021 (the “**Hearing**”). All requisite parties-in-interest had an opportunity to file a response to the Objection and attend the Hearing to support any asserted response to the Objection. No response to the Objection was filed and no creditor or party in interest appeared to oppose the relief requested in the Objection.

Having reviewed and considered the Objection and all other matters of record in this Bankruptcy Case, including the lack of objection thereto, after due deliberation thereon and finding that good cause exists for the entry of this Order and that no further notice or opportunity for hearing is required, after due deliberation and for good cause shown, it is hereby ORDERED that:

1. The Objection is SUSTAINED and GRANTED as set forth herein.
2. The Claims set forth on **Exhibit “A”** to the Objection are disallowed as secured claims and reclassified as unsecured claims and the Clerk is hereby authorized and directed to mark each such claim as unsecured on the claims register;
3. The Claimants holding the Claims are only entitled to receive a distribution on the Claims as unsecured claims;
4. The Trustee is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order; and
5. The Court shall retain jurisdiction over the interpretation or the implementation of this Order.

\*\*\*END OF ORDER\*\*\*

Prepared and Presented by:

LAW OFFICES OF HENRY F. SEWELL JR., LLC  
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(404) 926-0053  
hsewell@sewellfirm.com  
COUNSEL FOR THE CHAPTER 7 TRUSTEE

**Identification of parties to be served:**

Henry F. Sewell, Jr., Esq.  
Buckhead Centre  
2964 Peachtree Road NW, Suite 555  
Atlanta, GA 30305

Office of the U.S. Trustee  
362 Richard Russell Federal Building  
75 Ted Turner Drive, SW  
Atlanta, GA 30303

American Underwriting Services, LLC  
1255 Roberts Blvd.  
Suite 102  
Kennesaw, GA 30144

AFCO Credit Corporation  
5600 North River Road  
Rosemont, IL 60018

American Inter-Fidelity Exchange  
Thompson Hine  
c/o Garrett A. Nail  
3560 Lenox Road  
Two Alliance Ctr.  
Ste. 1600  
Atlanta, GA 303026

Prosight Specialty Management Company  
Inc. and New York Marine and General  
Insurance Company  
c/o Gary Marsh, Esq.  
Dentons US LLP  
303 Peachtree St., NE  
Suite 5300  
Atlanta, GA 30308

Seneca Crum Forster Insurance Company  
c/o Soffer, Rech & Borg, LLP  
48 Wall Street  
26th Floor  
New York, NY 10005

**IN THE UNITED STATES BANKRUPTCY COURT  
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<b>IN RE:</b>	§	<b>CHAPTER 7</b>
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<b>AMERICAN UNDERWRITING</b>	§	<b>Case No. 18-58406-SMS</b>
<b>SERVICES, LLC,</b>	§	
	§	
<b>Debtor.</b>	§	

**CERTIFICATE OF SERVICE**

This is to certify that service of the foregoing *First Omnibus Objection to Certain Claims Asserted in the Bankruptcy Case as Secured Claims* was served via the United States Bankruptcy Court for the Northern District of Georgia's Electronic Case Filing System to all registered parties who have filed appearances and requested notices in this case and by first class United States mail with adequate postage thereon or electronic mail, as indicated, to the following at the addresses stated below:

Office of the U.S. Trustee  
362 Richard Russell Federal Building  
75 Ted Turner Drive, SW  
Atlanta, GA 30303

American Underwriting Services, LLC  
1255 Roberts Blvd.  
Suite 102  
Kennesaw, GA 30144

AFCO Credit Corporation  
5600 North River Road  
Rosemont, IL 60018

American Inter-Fidelity Exchange  
Thompson Hine  
c/o Garrett A. Nail  
3560 Lenox Road  
Two Alliance Ctr.  
Ste. 1600  
Atlanta, GA 303026

Prosight Specialty Management Company  
Inc. and New York Marine and General  
Insurance Company  
c/o Gary Marsh, Esq.  
Dentons US LLP  
303 Peachtree St., NE  
Suite 5300  
Atlanta, GA 30308

Seneca Crum Forster Insurance Company  
c/o Soffer, Rech & Borg, LLP  
48 Wall Street  
26th Floor  
New York, NY 10005

Dated: March 5, 2021.

Respectfully submitted,

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ **Henry F. Sewell, Jr.**

Henry F. Sewell, Jr.

Georgia Bar No. 636265

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